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July 1, 2005

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 22054

**Re: MB Docket No. 03-15
Hoak Media of Colorado, LLC
KREG-TV/DT, Glenwood Springs, CO (Fac. No. 70578)
Request for Waiver and Extension of Replication/Maximization Deadline**

Dear Ms. Dortch:

Hoak Media of Colorado, LLC ("Hoak"), licensee of satellite television station KREG-TV/DT, Glenwood Springs, Colorado ("KREG"), by its attorneys, hereby requests a temporary, six-month waiver and extension of the July 1, 2005 replication/maximization deadline applicable to stations affiliated with a top-four network and located in the top 100 markets. For the reasons set forth below, good cause exists for granting a temporary, six-month waiver and extension of the July 1, 2005 replication/maximization deadline as it applies to KREG.

KREG operates as a satellite of parent station KREX-TV/DT, Grand Junction, Colorado ("KREX"). Parent KREX is a CBS network affiliate whose community of license is located in the Grand Junction-Montrose, Colorado Designated Market Area ("Grand Junction DMA"), the 190th ranked DMA in the country.¹ As a satellite station, KREG rebroadcasts the CBS network and other programming originated by its parent station KREX. KREG does not originate any programming of its own. Unlike its parent KREX, satellite station KREG is assigned to the Denver, Colorado Designated Market Area ("Denver DMA"), the 18th ranked DMA in the country, apparently because KREG's community of license, Glenwood Springs, Colorado, is

¹ KREX also is parent to satellite station KREY-TV/DT, Montrose, Colorado, which also is assigned to the Grand Junction DMA.

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located just inside the border of the Denver DMA.² Nevertheless, approximately one quarter of the population KREG serves resides within the Grand Junction DMA.

In the digital television (“DTV”) table of allotments, KREG was assigned DTV channel 23, which Hoak has selected as the in-core DTV channel for post-transition operation of KREG.³ Hoak also has certified that after the DTV transition it will operate KREG based on the station’s allotted replication facilities.⁴ KREG has a construction permit for DTV replication facilities,⁵ but currently is operating with reduced power DTV facilities pursuant to a special temporary authorization (“STA”) that has been extended through September 4, 2005.⁶

In the *Second DTV Periodic Review Report & Order*, the Federal Communications Commission (“FCC” or “Commission”) established July 1, 2005 as the “use-it-or-lose-it” deadline for DTV stations that are affiliated with the top-four networks (*i.e.*, ABC, CBS, Fox, and NBC) and located in television markets 1-100.⁷ Such stations which have received a tentative channel designation in the DTV channel election process must construct full, authorized DTV facilities in order to retain interference protection within each respective station’s replication or maximization service area.⁸ All other DTV stations are subject to a “use-it-or-lose-it” deadline of July 1, 2006.⁹

Pursuant to the Commission’s decision in the *Second DTV Periodic Review Report & Order*, KREG is subject to the earlier July 1, 2005 “use-it-or-lose-it” deadline because KREG airs CBS network programming and its community of license is located within the Denver DMA, a top-100 television market. In addition, in the DTV channel election process KREG has

² Attachment 1 hereto shows KREG’s analog Grade B contour in relation to the border of the Denver and Grand Junction DMAs and the population centers of the Denver DMA, such as the city of Denver.

³ See File No. BFRECT-20050209ACD.

⁴ See File No. BCERCT-20041105AMG.

⁵ See File No. BPCDT-19991029AFR.

⁶ See File No. BDSTA-20030925BBX, as extended by BEDSTA-20050215ACF.

⁷ See *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279, ¶78 (2004) (“*Second DTV Periodic Review Report & Order*”).

⁸ See *id.* at ¶85.

⁹ See *id.* at ¶78.

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tentatively received its allotted, in-core DTV channel 23 for post-transition operation.¹⁰ Nevertheless, as explained below, there is good cause for waiving temporarily the July 1, 2005 “use-it-or-lose-it” deadline as it applies to satellite station KREG.

A temporary waiver of the July 1, 2005 replication deadline as it applies to KREG is warranted because KREG operates as a satellite to its parent station KREX. Throughout the DTV transition, the Commission has recognized, and made special accommodations for, the unique status of satellite television stations like KREG. The Commission generally authorizes satellite stations in small or sparsely populated areas which have insufficient economic bases to support stand-alone, full-service television stations.¹¹ Recognizing the financial strain that would be placed on satellite stations if they were required to build out and operate full digital facilities, the Commission has afforded such stations special relief throughout the DTV transition. For example, satellite stations were specifically excluded from the accelerated DTV buildout deadlines imposed on top-four network-affiliated stations in the top 30 television markets.¹² More recently, the Commission gave satellite stations the option to “flash cut” from analog to digital transmissions at the end of the DTV transition period, rather than requiring dual analog and digital operation during the DTV transition period.¹³ In reaching this decision, the Commission recognized that “satellite stations may not be financially capable of operating both an analog and digital facility concurrently” and that “the unique status and circumstances faced by satellite stations warrant special treatment of these stations during the transition.”¹⁴ These same policy rationales support a temporary waiver of the July 1, 2005 replication deadline as it applies to KREG.

As an initial matter, it is inconsistent with the Commission’s DTV policies for satellite television stations, described above, to require KREG to construct DTV replication facilities one year before KREG’s parent station KREX is required to do so. As explained above, KREG’s parent station KREX is located in the Grand Junction DMA, the 190th ranked DMA, and therefore is subject to the later July 1, 2006 “use-it-or-lose-it” deadline. KREG, on the other

¹⁰ See *DTV Tentative Channel Designations for 1,554 Stations Participating in the First Round of DTV Channel Elections*, Public Notice, DA 05-1743 (rel. June 23, 2005).

¹¹ See, e.g., *Central Minnesota Television, Inc.*, 2 FCC Rcd 6730 (1987); *Television Satellite Stations*, 6 FCC Rcd 4212, 4213-14 (1991).

¹² See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order, 13 FCC Rcd 6860, ¶66 (1998).

¹³ See *Second DTV Periodic Review Report & Order* at ¶102.

¹⁴ *Id.* at ¶105.

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hand, is required to construct replication facilities by July 1, 2005, or face losing DTV interference protection because KREG is assigned to a top-100 DMA, even though its community of license, Glenwood Springs, has a population of only 8,306 persons and approximately one quarter of the population the station serves resides within the Grand Junction DMA. This unique situation results in an anomaly in that a satellite station that does not originate any programming of its own and that serves smaller communities than its parent station will be required to build replication facilities before its full-service parent station.¹⁵ A temporary waiver of the “use-it-or-lose-it” deadline as applied to KREG will correct this anomaly and permit both stations to construct DTV replication facilities concurrently, rather than requiring KREG to build out before its parent station.

In addition, although it is assigned to the top-ranked Denver DMA, in reality KREG serves only small, rural communities in the westernmost portion of the DMA. The Denver DMA is one of the largest television markets in the country, comprised of more than 40 counties and encompassing nearly three-quarters of the land area of the state of Colorado. KREG is licensed to a community in the westernmost portion of the Denver DMA in a county that borders on the state of Utah and the Grand Junction DMA. Consequently, KREG’s signal does not reach the cities of Denver, Boulder, Fort Collins, Greeley, or any of the other centrally located, population centers where the majority of the television households in the Denver DMA reside. Indeed, these cities are located more than 100 miles from KREG’s community of license and are separated from the KREG’s transmitter by the Rocky Mountains and several national forests. In contrast, all of the other top-four network affiliate television stations assigned to the Denver DMA, which are KMGH-TV (ABC), KCNC-TV (CBS), KDVR(TV) (Fox), KFCT(TV) (Fox), and KUSA-TV (NBC), are centrally located in the DMA and provide city grade service to either Denver or Fort Collins.¹⁶

Rather, KREG primarily serves small, rural communities located in and around the Grand Junction DMA where its parent station KREX is located. In contrast to the Denver DMA, the Grand Junction DMA is one of the smallest DMAs in the country, both in terms of area and population. The Grand Junction DMA is ranked 190th out of the 210 DMAs and is comprised of only two counties—Mesa and Montrose. KREG’s community of license, Glenwood Spring, is approximately 10 miles from the border of the Grand Junction DMA, and the station’s transmitter is even closer to the DMA border, located approximately 9.5 miles southwest of

¹⁵ Attachment 1 hereto shows KREG’s analog contour which does not reach the city of Grand Junction which is served by its parent station KREX.

¹⁶ See Television & Cable Factbook 2004 at A-348, A-349, A-351, A-356, and A-364.

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Glenwood Springs.¹⁷ KREG provides service primarily to rural communities along state Route 6 toward Mesa County and the city of Grand Junction, which is the population center of the Grand Junction DMA.¹⁸ Thus, at least for purposes of meeting the “use-it-or-lose-it” deadlines, KREG should be deemed associated with the much lower-ranked Grand Junction DMA where its parent station KREX is located, and not the top-ranked Denver DMA. Accordingly, KREG should be subject to the later July 1, 2006 deadline.

Moreover, KREG is not the only, nor the highest-ranked, station airing CBS network programming in the Denver DMA. Station KCNC-TV/DT, Denver, Colorado, is a higher ranked CBS affiliate centrally located in the Denver DMA which provides service to approximately 1.27 million of the estimated 1.4 million television households in the Denver DMA.¹⁹ As explained above, KREG, in contrast, is licensed in the westernmost portion of the Denver DMA and is licensed to a community of only 8,306 persons. In addition, approximately one quarter of the population KREG serves resides within the Grand Junction DMA. When the Commission previously adopted an accelerated DTV construction schedule for top-four network affiliates in the top 30 television markets, it recognized that “there are individual television markets where ABC, CBS, Fox, or NBC has more than one affiliate” and in such instances the accelerated construction deadline should apply only to the network affiliate with the largest audience share.²⁰ Likewise, when applying the replication/maximization deadline, the Commission should recognize that KREG is the lower-ranked CBS affiliate in the Denver DMA and the station therefore should not be subject to the earlier July 1, 2005 “use-it-or-lose-it” deadline.

In sum, KREG’s unique position as a satellite station that is located just inside the border of a much higher-ranked DMA than its parent station KREX warrants a temporary waiver of the July 1, 2005 replication deadline. KREG serves only smaller communities located in and around the Grand Junction DMA, and its signal does not reach the population centers of the Denver DMA. A temporary waiver of the “use-it-or-lose-it” deadline as applied to KREG is consistent with the special relief the Commission has afforded satellite television stations throughout the DTV transition and will correct the anomaly that otherwise would require KREG to build DTV replication facilities before its parent KREX is required to do so.

¹⁷ See Antenna Structure Registration No. 1034540.

¹⁸ See Attachment 1.

¹⁹ See Television & Cable Factbook 2004 at A-2 and A-348.

²⁰ See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fifth Report and Order*, 12 FCC Rcd 12809, n.164 (1997).

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For all of the foregoing reasons, Hoak respectfully requests a temporary, six-month waiver and extension of the July 1, 2005 “use-it-or-lose-it” deadline as it applies to satellite station KREG.

Please direct any questions or inquiries regarding this matter to the undersigned.

Respectfully submitted,

/s/

Tom W. Davidson, Esq.

cc: Shaun Maher, Esq. (via e-mail)

Attachment 1

**Map of Colorado Showing Boundaries of Denver and Grand Junction DMAs
and KREG-TV Grade B Contour**

